

In the High Court of Punjab and Haryana at Chandigarh.

RSA No.356 of 2001

Date of decision: 02.08.2007.

Ram Kishore

...Appellant.

Versus

State of Haryana and another. ...Respondents.

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HON'BLE MR. JUSTICE PERMOD KOHLI

Present: Mr. Vijay Singh, Advocate, for the appellant.
Mr. MS Sindhu, D.A.G., Haryana, for the respondents.

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PERMOD KOHLI, J. (ORAL):

This Regular Second Appeal is directed against the judgments and decrees passed by the learned Courts below.

The plaintiff-appellant is running a video theatre at village Indri, Tehsil and District Karnal. This video theatre was established in the year 1987. At the relevant time, the owner of the theatre was liable to pay

the entertainment tax under the Punjab Entertainment Duty Act at the rate of Rs.10,000/- per quarter for running the video theatre. Vide notice No.1527/P.B.T. (Asstt.), dated 24.11.1992, the tax was enhanced from Rs.10,000/- per quarter to Rs.15,000/- per quarter and consequently, a demand of Rs.30,000/- was made from the plaintiff-appellant. The plaintiff filed a suit for permanent injunction restraining the defendants from recovering the amount of Rs.30,000/- on account of security and enhanced

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entertainment tax. The main contention of the plaintiff-appellant was that the entertainment tax can be levied on the basis of the 1981 census and since no other census has been made, enhancement is impermissible. The learned trial Court, however, did not agree with the contention of the plaintiff-appellant and dismissed the suit vide its judgment and decree dated 10.10.1998 passed by the learned Additional Civil Judge (Senior Division), Karnal. The appeal preferred before the learned Additional District Judge, Karnal, also remained un-successful. The present appeal is against the aforesaid judgments and decrees of the learned Courts below.

I have heard the learned counsel for the parties at length and perused the record of the case.

It has been brought to my notice that the suit of the plaintiff is

only for permanent injunction restraining the defendants from effecting recovery at the enhanced rate of entertainment tax. However, there is no challenge to the order dated 24.11.1992 which is the basis for effecting recovery. From the perusal of the judgments and the facts on record, it appears that the plaintiff-appellant has not challenged the validity of the order dated 24.11.1992. Apart from that, learned counsel for the respondents has referred to the rules, namely, Punjab Entertainment Duty (Haryana First Amendment) Rules, 1989. Rule 8-A of the Rules aforesaid, deals with the payment of duty on video shows. In terms of this rule, where the population of the village/town is less than 10,000, the duty payable per quarter is Rs.10,000/-. Where the population is between 10,000 to 24,999, the duty payable is Rs.15,000/- and in case the population exceeds 25,000, duty payable is Rs.25,000/- per quarter. There is explanation appended to this rule, which provides that the latest census figures, shall be the basis for

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determining the population of any place. It has also come on the record that the census of 1991 was placed on the record wherein the population of village Indri is shown to be 11,131 and on the basis of this population, the duty payable is Rs.15,000/- per quarter. This evidence has not been rebutted in any manner.

Lastly, it is contented on behalf of the appellant that the validity of the Rule 8-A of the Rules aforesaid, is under challenge in a separate writ petition. However, no interim directions have been issued by the writ Court. The statute is to operate so long it remains on the statute book. Both the learned Courts below have found that the duty payable is as per the rules. There is no legal or factual infirmity in the judgments and decrees passed by the learned Courts below.

In view of the above, I find no merit in this appeal and the same is hereby dismissed with no order as to costs.

August 02, 2007
BLS

(PERMOD KOHLI)
JUDGE

Note: Refer to Reporter: Yes